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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,963	04/27/2001	Mark J. Weiser	1671-0004	8648
7590	05/11/2004		EXAMINER	
BARRY I. FRIEDMAN			LEVY, NEIL S	
METZ LEWIS, LLC			ART UNIT	PAPER NUMBER
11 STANWIX STREET			1616	
18TH FLOOR				
PITTSBURGH, PA 15222				
DATE MAILED: 05/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/842,963	WEISER, MARK J.
	Examiner Neil Levy	Art Unit 1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on 2/14/04

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-9, 24-26 is/are pending in the application.

4a) Of the above claim(s) 23, 25, 13-23 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 16-12, 24-26 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 1-9, 24 are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

Receipt is acknowledged of amendment of 2/4/04.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2, 3, 5, 13-23 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 3/11/03.

Claims 1, 7-12, 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaha 5611165 in view of EASON 5622314 and Bell - 5672342.

At Blaha: See the closed container having odiferous compositions with in an impervious to liquid (fluid tight) (claim 17). The sent is unspecified; the carrier is a pad, thin. Eason uses doe scent but with an absorbent fibrous wick carrier (claim 8).

Bell provides urine (claims 4-6). Since Blaha is for Hunting Blaha could have used any scent Bell's urine.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize Blaha to attract deer, to use an attractant composition of EASON or Bell. Motivation is directly in Blaha as purpose of invention is

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to an improved scent carrier. EASON has the scent, as does Bell, but both means of use are inferior, as pointed out by Blaha in Background.

It has not clearly been established by objective showing of some unobvious and/or unexpected results that the administration of the particular form of active, carrier, or the particular size, shape, or material provides any greater level of prior art expectation as claimed. Further, no criticality as to the ingredient actives, concentrations,. Applicant has showed application or material.

Claims 1, 4, 6-8, 11, 12, 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novotny et al 5252326 in view of Warberg - 6337081.

Novotny provides animal liquid (urine) with solid carrier (col. 4 summary) products suitable to control rodents (col. 4, lines 37-45). Novotny did not address storage, or containerization problems. Warberg does to control rodents, and provides the instant package, but no urine. See Fig.2, col. 3 line 16-31 perforated plastic envelope within which are presented fibrous composition. The thickness is as required to contain, yet permit effluence and be easy to handle, functional (fig. 3), thus of a size and thickness within the purview of one of ordinary skill, of 1-5mm.

Thus, it would be obvious to one of ordinary skill in the art desiring to utilize Rodent control compositions, to prepare those of Novotny as shown to be well known in the art, with specific containers shown by Warberg.

It has not clearly been established by objective showing of unobvious and/or unexpected results, that the administration of the particular form of active, carrier, or the particular form of package provides any greater level of prior art expectations as

claimed. Further, applicant has showed no criticality as to the active and additive agents; nor their concentration, or packaging.

Applicant's arguments filed on 2/4/04 have been fully considered but they are not persuasive. Applicant argues in essence, the now claimed invention is not in the prior art. But it is, see new rejection, as response to amended claims. Withdrawn rejections reflect applicants amendments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR  
May 3, 2004



NEIL S. LEVY  
PRIMARY EXAMINER